

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 14 FEB 2006

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Applicant's or agent's file reference 0429	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/IB 03/06189	International filing date (day/month/year) 26.12.2003	Priority date (day/month/year) 26.12.2003
International Patent Classification (IPC) or both national classification and IPC A23L2/56		
Applicant COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.
 - ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

- This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 25.07.2005	Date of completion of this report 13.02.2006
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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/IB 03/06189

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-7 as originally filed

Claims, Numbers

1-14 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-14
	No: Claims	
Inventive step (IS)	Yes: Claims	1-14
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement under Art.35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Cited prior art

- 1 Reference is made to the following documents:
 - D1: DATABASE WPI Section Ch, Week 199649 Derwent Publications Ltd., London, GB; Class D13, AN 1996-495770 XP002291509 & RU 2 055 492 C1 (REMMER S G) 10 March 1996 (1996-03-10)
 - D2: US 2001/048965 A1 (CHERUKURI SUBRAMAN RAO) 6 December 2001 (2001-12-06)
 - D3: EP-A-0 772 977 (KRAFT FOODS INC) 14 May 1997 (1997-05-14)
 - D4: WO 99/20289 A (OPPENHEIM RICHARD CHARLES ; LIN JING (AU); TRUONG HUNG CAM (AU); R P S) 29 April 1999 (1999-04-29)
 - D5: US 2003/185916 A1 (BRINKHAUS FRIEDHELM ET AL) 2 October 2003 (2003-10-02)

Novelty

- 2 The subject matter of independent product claim 1 and of independent process claim 8 fulfills the requirements of Art.33(2) PCT.
- 2 None of the documents discloses the list of ingredients of independent claim 1:
 - 2.1 D1 discloses rosemary herbal tea but -among others- no sucrose and no encapsulated rosemary flavour.
 - 2.2 D2 discloses encapsulation of active ingredients which can be selected from flavouring ingredients or herbs (§§54, 55 and 59). D2 also suggests the use of such capsules in beverages (§§97 and 98). Rosemary is not mentioned and D2 is silent about beverage compositions.
 - 2.3 D3 discloses dry mixes for beverages with high contents of sweetening agent like sucrose, however fails to mention encapsulated flavours (claim 7; Examples).
 - 2.4 D4 divulges in claim 27 encapsulated rosemary extract but no beverages.
 - 2.5 D5 describes extraction of anti-oxidative substances from rosemary (Examples).
- 3 The subject-matter of independent process claim 8 is directed to the process for producing the novel product of claim 1 and is thus novel *per se*.

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Inventive step

- 4 The subject-matter of independent product claim 1 and of independent process claim 8 and of the thereof depending claims is not considered to be obvious and thus fulfills the requirements of Art.33(3) PCT.
- 4.1 The problem to be solved is considered production of rosemary beverage with appealing flavour (p.2 l.13-18).
- 4.2 D1 is considered to be the closest prior art, as it discloses a rosemary beverage.
- 4.3 None of documents D2-D4 suggest in combination with D1 to formulate the composition of claim 1.
- 4.4 More importantly, the solution to the technical problem regarding provision of desired flavour is provided by a combination of definite amounts of two separate rosemary extracts, one thereof being encapsulated.
- 4.5 The subject-matter of independent process claim 8 is directed to the process for producing the inventive product of claim 1 and thus involves an inventive step.